

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALLEN CUTLER,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 2:15-CV-3090-FVS

ORDER ADOPTING REPORT AND
RECOMMENDATION TO DENY
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
GRANT DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

ECF Nos. 12, 15, 19

BEFORE THE COURT is the Report and Recommendation issued by Magistrate Judge Mary K. Dimke on July 21, 2016, ECF No. 19, recommending Plaintiff's Motion for Summary Judgment, ECF No. 12, be denied and Defendant's Motion for Summary Judgment, ECF No. 15, be granted. Plaintiff has filed objections to the Report and Recommendation. ECF No. 20.

The Plaintiff's objections to the Report and Recommendation are primarily restatements of his previous arguments, including: (1) the ALJ improperly rejected

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1 the opinion of Plaintiff's treating physician; and (2) the ALJ failed in her duty to
2 properly develop the record. ECF No. 20.

3 **A. Medical Opinion Evidence**

4 Plaintiff argues that the reason given by the ALJ for rejecting the opinion of
5 Plaintiff's treating physician, Dr. Emmons, was not legally sufficient. ECF No. 20
6 at 1-5. The Court is unpersuaded. Plaintiff's objections are almost entirely
7 restatements of the arguments already considered, and ruled on, by the Magistrate
8 Judge. Plaintiff additionally notes that the Court must consider only the reasons
9 offered by the ALJ, and may not engage in post hoc reasoning. *See Bray v.*
10 *Comm'r of the Soc. Sec. Admin.*, 554 F.3d 1219, 1225-26 (9th Cir. 2009) ("[l]ong-
11 standing principles of administrative law require us to review the ALJ's decision
12 based on the reasoning and factual findings offered by the ALJ – not post hoc
13 rationalizations that attempt to intuit what the adjudicator may have been
14 thinking."). However, Plaintiff does not specifically cite to any reasoning
15 considered by the Defendant, or the Magistrate Judge, that was not offered by the
16 ALJ. As addressed in the Report and Recommendation, the ALJ provided a
17 specific and legitimate reason for discounting Dr. Emmons' opinion.

18 **B. Duty to Develop the Record / Consultative Psychological Examination**

1 Plaintiff argues the ALJ failed in her duty to properly develop the record by
2 not ordering a consultative psychological examination. ECF No. 20 at 5-10. As
3 above, Plaintiff's argument is rejected because it is largely comprised of the same
4 arguments already properly considered by the Magistrate Judge. In addition,
5 Plaintiff summarily argues that the ALJ's finding at step two "is not supported by
6 the record." ECF No. 20 at 6-7. However, as noted by Defendant, and by the
7 Magistrate Judge, Plaintiff did not specifically challenge the ALJ's step two
8 findings in his opening brief. ECF No. 21 (citing ECF No. 19 at 27-28). Thus, this
9 argument is waived. *See Bray*, 554 F.3d at 1226 n.7 (argument not made in
10 plaintiff's opening brief is waived). As explained in the Report and
11 Recommendation, the ALJ's duty to develop the record was not triggered in this
12 case, nor did the ALJ err by declining to order a consultative psychological
13 examination.

14 After reviewing the Report and Recommendation, the objections, and
15 relevant authorities, the Court finds the Magistrate Judge's findings are correct.
16 Therefore, the Court adopts the Report and Recommendation in its entirety.
17 Accordingly, **IT IS ORDERED:**

18 1. Plaintiff's Objections to Magistrate Judge Dimke's Report and
19 Recommendation, **ECF No. 20**, are **OVERRULED**.

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1 2. The Report and Recommendation, **ECF No. 19**, is **ADOPTED** in its
2 entirety.

3 3. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
4 **GRANTED**.

5 4. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

6 The District Court Executive is directed to file this Order and forward copies
7 to the parties. Judgment shall be entered for Defendant and the file shall be
8 **CLOSED**.

9 DATED August 30, 2016.

10 s/Fred Van Sickle
11 Fred Van Sickle
12 Senior United States District Judge